COURT NO. 2

IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL

Writ Petition No. 26 (S/B) of 2005

1. State of Uttaranchal through Secretary, Home Secretariat, Dehradun.

2. Deputy Inspector General of Police, Garhwal Range, Pauri, Superintendent of Police, Uttarkashi.

... Petitioner

Vs

1. The Public Service Tribunal, Uttaranchal at Dehradun

2. Sri Pawan Kumar, S/o Sri Gajraj Singh,
R/o Village Basi, P.O. Khekra, P.S. Khekra,
District Bagpat

... Respondents

Sri K.P. Upadhyaya, learned. counsel for the petitioner.
Sri B.D. Upadhyaya, learned counsel for respondent No. 2

Dated: May 3, 2006

Hon'ble P.C. Verma, J.
Hon'ble B.C. Kandpal, J.

By means of this writ petition, the petitioners have prayed for writ of certiorari quashing the impugned judgment and order dated 06.10.2004 passed by Respondent No.1- Public Service Tribunal in Claim Petition No. 276T/2002 (Pawan Kumar Vs. State through Home Secretary & others), which is contained in Annexure No. 1 to the writ petition.

2. The operative portion of the impugned judgment passed by the Tribunal is reproduced hereunder:-

"Accordingly, the claim petition is partly allowed and petitioner is reinstated in service with immediate

effect. He will be treated in the same capacity as he was on the day when eh was served impugned dismissel order. However, no salary etc. would be payable to him form the date of impugned dismissal order till his rejoining on the principle of 'No work no pay'. However, the department will be at liberty to proceed against him of the unauthorized absence and should it decided to do so, it shall be obligatory upon them to provide adequate opportunity for his defence and pass any appropriated order except dismissal from the service. No order to the costs."

3. Brief facts of the case giving rise to the present petition are the Respondent No.2, Constable, preferred a claim petition under Section 4 of Uttar Pradesh Lok Seva Nyayadhikaran Adhiniyam, 1976 (as amended in 1992) against his dismissal from police service by Superintendent of Police, Uttarkashi vide order dated 28.04.2000. The Respondent No. 1 preferred an appeal against the said order to Dy. Inspector General of Police, Dehradun Range, Dehradun vide his appeal dated 24.07.2000, which is not decided till the filing of the claim petition. The petitioner did not attend his duties from 01.01.1999 to 28.02.1999, 01.03.1999 to 19.04.1999, 20.04.1999 to 29.06.1999, 29.06.1999, to 26.09.1999 to 27.09.1999 to 25.03.2000. Accordingly, the charges were framed against the Respondent No. 2 and the chargsheet was served on him through his father Sri Gajraj Singh and the departmental proceedings were initiated and the inquiry officer submitted its report. The petitioner despite the service did not present himself at any stage of the inquiry. The inquiry was held on the basis of material available on record and the inquiry report was submitted after perusal of the entire material on record in the inquiry proceedings. Thereafter, the punishing authority passed the order of dismissal of the Respondent No. 2 dated 28.04.2000. Against this order, the aforesaid claim petition was filed before the Public

Service Tribunal. In the counter affidavit filed by the petitioner/ respondent Nos. 2 and 3 before the Tribunal, it was stated that instead of complying with the transfer orders, he abstained from the duty without information and therefore departmental proceedings were taken against him under paras 381 and 382 of Police Regulation. It was specifically stated in the counter affidavit that the Respondent No. 2 did not participate in the departmental inquiry and absented himself from the inquiry. Thereafter, a chargsheet was served on Respondent No. 2 on 11.10.1999 with a direction that the reply may be filed by 25.10.1999 and the chargesheet was sent for service by a special messenger which was served through his father Sri Gajraj Singh.

4. The Tribunal in his judgment has notice the fact stated by Respondent No. 2 that he did not avail the opportunity to defend himself, although service of all communications has been made by the petitioner /respondents from time to time through available means. In the claim petition, the Respondent No. 2 took a plea that he had fallen ill, therefore, he could not participate in the departmental proceedings to defend himself. The Tribunal has dealt with the medical certificate filed by Respondent No. 2 and held as under:-

> *"With the doubt of genuineness on the medical certificates submitted by the petitioner, the department has reason to believe that the certificates are bogus."*

5. The Tribunal has further held that "*By resorting to the above procedure in the departmental enquiry, the Respondents have given enough documentary evidence to suggest that the departmental enquiry has been conducted as per the rules and no procedural*

irregularity whatsoever has been committed." Despite the aforesaid findings recorded by the Tribunal, the Tribunal in the operative portion of its judgment as quoted above has directed to hold the fresh enquiry against the Respondent No. 2

6. In view of the above, the order passed by the Public Service Tribunal is contrary to the findings recorded by the Tribunal in its judgment and cannot be sustained in the eyes of law. Accordingly, the writ petition is allowed. The operative portion of the order dated 06.10.2004 passed by Respondent No.-1 Public Service Tribunal, Dehradun is hereby set aside and claim petition is dismissed accordingly. No order as to costs.

(B.C.Kandpal, J.) **(P.C.Verma,J.)**

Rajeev Dang